



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

PENALTIES, LYNCH LAW, AND THE CONSTITUTION.—In the time of King Canute, if a person was killed and his slayer escaped, the ville was obliged to pay the crown forty marks for his death. Under the Norman kings the people of the hundred were answerable, for robberies committed within their limits, to the persons damaged. 1 Reeves, Hist. of Eng. Law, 11, 213. Now the State of Ohio, with the intention of blotting out lynch law, has gone one step farther and enacted that the next of kin of a person killed by a mob may recover from the county a fixed sum of \$5000. This statute was held unconstitutional in *Mitchell v. Champaign Co.*, 5 Ohio Nisi Prius 158, on the ground that it deprived the inhabitants of the county of their property without due process of law. On appeal to the Circuit Court this judgment was reversed. See Central Law Journal, Feb. 3, 1899. The court say that the act, if considered merely as giving the next of kin compensation, is bad in that it arbitrarily fixes the amount of the loss at \$5000; but that in fact it simply imposes a penalty in the interests of public order and is therefore valid. This reasoning leaves open one rather doubtful question. Granting the \$5000 is a penalty, can it legitimately be allowed to go to the next of kin instead of to the state?

Many cases have upheld statutes which gave the right to recover actual damage suffered at the hands of a mob. *Darlington v. Mayor of New York*, 31 N. Y. 164. *Chicago v. Manhattan Cement Co.*, reported in Chicago Legal News, Feb. 25, 1899. (Ill. Sup. Ct.) But in these cases there was a moral claim for compensation on the part of the next of kin, and this claim extended to the whole sum recovered. In the principal case the damage might be far less than \$5000. On what principle could the difference be recoverable? Taxation imposed to recompense for the actual injury in such a case might stand; but taxation for the benefit of an individual who has no legal or moral claim is clearly bad. If the test be whether the legislature could properly by taxation raise \$5000 from a county to pay a person whose claim is, say, \$1000, then this act falls. But this is not the true light in which to look at the matter. The question is not whether the state could raise money for this purpose by taxation nor whether the state, having got the money, could spend it in this way. The question is whether, as an ordinary police measure, allowing the next of kin through the courts to take \$5000 from the county is such an arbitrary exercise of legislative power as amounts to a deprivation without due process of law. Due process of law includes both deprivations by such legislation as has been recognized in the past as within the scope of legislative power, and also any legislation which looks to the general welfare of society and is not arbitrary or irrational. The practice of centuries shows the legislature may impose penalties to secure order. It has always been customary to allow recovery for injury by lawlessness. At least one case, identical in facts with this, has held the statute void. *Gunter v. Dale Co.*, 44 Ala. 639. And if we look at the act as a practical working attempt both to inflict punishment and at the same time to give a measure of compensation, it is hard to consider it arbitrary legislation. The individual's interest insures the county's being promptly brought to account. The fixed sum avoids the delay and the expense incident to an inquiry into damages, and payment to this recipient will increase the distastefulness of the punishment to the offenders. It might too be said that, even as informers take half the fine, the individual here gets the money partly as a reward for prosecuting. The remedy is certainly effective, and it seems on the whole well within the power to legislate for the good order and welfare of the community.